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Notes and Correspondence

IMPRISONMENT FOR DEBT

In 1911 the California legislature passed a law¹ in substance declaring that in case of an employee's discharge the balance of wages due him must be paid immediately, that in case he leaves his employment (not being under contract for a definite period) such balance must be paid within five days, that in all other cases wages must be paid at least monthly and not more than fifteen days after the end of the month, that **any one violating any provision** of the act "shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$500." Arthur Crane violated a provision of this act; an information was laid against him before a police judge of San Francisco; a warrant was issued for his arrest; and he was jailed by the San Francisco police; all in accordance with the provisions of Title III of Part II of the Penal Code, relating to criminal procedure. Crane sued out a writ of habeas corpus in the District Court of Appeal for the First District, claiming that the wage law "in effect *permits* an imprisonment on mesne process for debt" in violation of that clause of article one, section fifteen, of the state constitution, which provides: "No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud." In *Ex Parte Arthur Crane, on Habeas Corpus*² the court sustained his claim. In reaching this conclusion it said:

"True, the statute does not provide imprisonment as the penalty for the failure of an employer to pay a debt due to his employee. The statute, however, is silent as to the process by which the magistrate before whom complaint is made of an alleged violation of the statute may obtain jurisdiction of the person of the offender. In the case at bar . . . the statute . . . was attempted to be enforced by the issuance and execution of a mesne process which . . . resulted in the temporary imprisonment of the petitioner, and the cause of his imprisonment is to be found primarily in the fact that he is unwilling or, perchance, unable to discharge a

¹ 1911 Stats. Cal. 1268.

² (Nov. 23, 1914), 19 Cal. App. Dec. 677.

debt which was not conceived or contracted in fraud of his creditor. To this extent the arrest of the petitioner necessarily is in conflict with the fundamental law of the state."

Thus the appellate court argues that when the police court resorted to the procedure of the Penal Code to bring Crane to answer, and caused his arrest pursuant to the provisions of that code, it violated his constitutional rights; that because the wage law did not expressly prohibit resort to this unconstitutional procedure for its enforcement it also was unconstitutional. A mere statement of this argument in this condensed form shows its weakness. If every penal law was unconstitutional that did not by its terms expressly prohibit resort to unconstitutional methods for its enforcement, almost all penal statutes would be unconstitutional. If the constitutional right of an accused to a public and speedy trial was denied, or he was refused his constitutional right of counsel, according to this argument the penal statute he was accused of violating would itself be unconstitutional. The true rule, however, is that a penal statute is not unconstitutional or nonenforceable because it does not prescribe the needful procedure; that in such case the court may formulate its own procedure.³ Power to do this is expressly given to courts by section 187 of the Code of Civil Procedure. Thus, conceding that the California statutes provide no constitutional procedure for the enforcement of the penal provisions of the wage law, the law is not thereby rendered either unconstitutional or nonenforceable; but it would be the duty of any court before which complaint was made of the violation of such penal provisions to establish a proper procedure for the enforcement thereof.

A more thorough consideration of the constitutional provision shows, however, that in fact the course taken by the police court did not violate any constitutional guaranty whatever. The distinction between criminal and civil actions is well known and primary. The constitutional prohibition is against imprisonment for debt "in civil actions". It has no relation whatever to criminal actions. Nor does the constitution directly or indirectly prohibit the legislature from declaring nonpayment of a debt a crime nor from punishing such crime by imprisonment on mesne or final process or both. The constitution is a limitation of power, not a grant, and the legislature has all power not expressly or by neces-

³ *People v. Jordan* (1884), 65 Cal. 644, 4 Pac. 683; *People v. Chew Lan Ong* (1904), 141 Cal. 550, 75 Pac. 186, 99 Am. St. Rep. 88.

sary implication taken from it. In *In Re Diehl*⁴ this very point was before the District Court of Appeal for the Third District, and was decided in accordance with the distinction here made. P. Diehl had been imprisoned for crime under a city ordinance exacting certain business licenses, authorizing civil suits for their collection, and making nonpayment of any license when due a misdemeanor punishable by fine or imprisonment. He petitioned for a writ of habeas corpus, and made claim that "it is against the spirit and policy of the law to subject a person failing or refusing to pay the license . . . to penal punishment for the mere nonpayment of a debt." The court, in denying the writ, said:

"We see no reason why such power should not be exercised consistent with the policy of the law against imprisonment for debt. We do not understand the penal clause of the ordinance before us to mean that one engaging in business upon which a license tax is imposed under the taxing power and refusing to procure the license required may be imprisoned until the license tax is paid. The misdemeanor consists in a refusal to obey the provisions of the ordinance, and the fine authorized to be imposed upon conviction is not intended as a payment of the license tax, but as a punishment for defying the commands of the ordinance."

Similarly, the wage law makes defying its commands a misdemeanor punishable by fine, but the imposition of such punishment upon an offender in no sense takes the place of the prompt payment of, and does not satisfy, the employee's demand.

That the constitutional guaranty against imprisonment for debt was not violated by the police court is further apparent from the context of the guaranty. The next clause of the section in which it is contained provides: "No person shall be imprisoned . . . in civil actions for torts, except in cases of willful injury to person or property." It is clear that this provision renders imprisonment unlawful in a civil action for negligent injury to person or property. Thus in a civil action to recover damages from the operator of an automobile who negligently runs down a pedestrian, the operator cannot be subjected to imprisonment; but no one has the temerity to argue that if the pedestrian dies from his injuries the operator could not be imprisoned for felony under section 192 of the Penal Code, notwithstanding the identical acts and transaction which constituted the civil wrong in the vindication of

⁴ (1908), 8 Cal. App. 51, 96 Pac. 98.

which the operator could not be imprisoned also constituted the crime.

The decision of the District Court under consideration illustrates anew the dangers of our system of declaring laws unconstitutional. Oftentimes an insufficiently argued or insufficiently considered opinion forms an evil precedent which defeats the constitutional powers of the legislature. This is especially true in this state since the decision of the Supreme Court (by a divided court) that it has no power of rehearing in habeas corpus cases decided by the district courts. If the new practice of the First District Court in deciding cases from the bench results in many errors such as those manifest in this case, the sooner this new practice is abandoned the better.

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